

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JESSA HINTON, et al.,

Plaintiffs,

v.

MDM RESTAURANTS,
INC.,

Defendant.

Case No. 2:17-cv-14036

District Judge Nancy G. Edmunds

Magistrate Judge Anthony P. Patti

**ORDER GRANTING AS UNOPPOSED PLAINTIFFS' MOTION TO
COMPEL NON-PARTY ACCUFORM BUSINESS SYSTEMS, INC. TO
COMPLY WITH SUBPOENA (DE 35) AND CANCELLING HEARING
NOTICED FOR NOVEMBER 2, 2018 (DE 38)**

Currently before the Court is Plaintiffs' September 28, 2018 motion to compel non-party Accuform Business Systems, Inc. to comply with subpoena, which has been referred to me. (DEs 35, 36.) This motion initially was set for hearing on November 2, 2018 at 2:00 p.m. (DE 38.) However, pursuant to E.D Mich. LR 7.1(f)(2), this motion will be determined without oral argument. (DE 45.)

According to the motion, which is supported by attached email correspondence, counsel for Plaintiffs issued and served an amended record subpoena to non-party Accuform Business Systems, Inc. (Accuform) on June 20, 2018 to produce six categories of documents. (DEs 35, 35-1 at 5-14.) On June 28,

2018, attorney Brian Daley contacted Plaintiffs' counsel, stated that he had been retained to represent non-party Accuform in relation to the subpoena, and requested an extension of time until July 27, 2018 to respond to the subpoena. (DE 35-1 at 16-17.) However, non-party Accuform never objected to the subpoena pursuant to Fed. R. Civ. P. 45, or otherwise responded to it. Counsel for Plaintiffs contacted Mr. Daley by email on August 1 and August 12, 2018 regarding the status of non-party Accuform's response to the subpoena, and left a voicemail for Mr. Daley on August 16, 2018, but he never received a response. (DEs 35 at ¶ 9, 35-1 at 16.)

Plaintiffs filed the instant motion to compel on September 28, 2018, seeking an order compelling non-party Accuform to comply with the subpoena and produce responsive documents. (DE 35.) "A response to a nondispositive motion must be filed within 14 days after service of the motion." E.D. Mich. LR 7.1(e)(2)(B). Thus, in the absence of a scheduling order stating otherwise, Accuform's response to Plaintiffs' September 28, 2018 motion (DE 35) would have been due on or about October 15, 2018. *See* Fed. R. Civ. P. 6(a), 6(d). To date, Accuform has not responded to Plaintiffs' motion.

The local court rules of the Eastern District of Michigan required Accuform to file a response if it wished to oppose Plaintiffs' motion to compel. *See* E.D. Mich. LR 7.1(c)(1) ("A respondent opposing a motion must file a response,

including a brief and supporting documents then available.”) (emphasis added).

Opposition to a motion is deemed waived if the responding party fails to respond or otherwise oppose the motion. *See Humphrey v. United State Attorney General’s Office*, 279 F. App’x 328, 331 (6th Cir. 2008). Because Accuform has not responded to Plaintiffs’ motion to compel it to comply with the subpoena, Plaintiffs’ motion can and will be construed as unopposed.

Accordingly, Plaintiffs’ motion to compel non-party Accuform Business Systems, Inc. to comply with subpoena is **GRANTED as unopposed** as follows:

1. Nonparty Accuform Business Systems, Inc. is **ORDERED** to respond to Plaintiffs’ amended subpoena and produce the requested documents to Plaintiffs by **MONDAY, NOVEMBER 12, 2018**. All objections are deemed waived.
2. Counsel for Plaintiffs shall serve a copy of this Order on counsel for non-party Accuform Business Systems, Inc. forthwith by email and overnight courier, and file proofs of service for the same with the Court.

In addition, the hearing noticed for November 2, 2018 (DE 38) is **CANCELLED**.

IT IS SO ORDERED.

Dated: November 2, 2018

s/**Anthony P. Patti**

Anthony P. Patti
UNITED STATES MAGISTRATE JUDGE

Certificate of Service

I hereby certify that a copy of the foregoing document was sent to parties of record on November 2 , 2018, electronically and/or by U.S. Mail.

s/Michael Williams

Case Manager for the
Honorable Anthony P. Patti